

Members

Sen. Beverly Gard, Chairperson
Sen. Kent Adams
Sen. Lindel Hume
Sen. Vi Simpson
Rep. James Bottorff
Rep. Ron Herrell
Rep. Steven Heim
Rep. David Wolkins
Lori Kaplan
Dwayne Burke
John Ulmer
Shelley Miller
Ellen Tobias
William Goffinet
Randal D. Edgemon
Julia Wickard
William Hayden
Michael Sutherlin



ENVIRONMENTAL QUALITY SERVICE COUNCIL

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Authority: P.L. 248-1996 Reestablished by P.L.
248 -2001 (Amended by P.L. 240-2003)

MEETING MINUTES¹

Meeting Date: October 29, 2003
Meeting Time: 10:00 A.M.
Meeting Place: Governmental Center South, 302 W.
Washington St., Conference Room B
Meeting City: Indianapolis, Indiana
Meeting Number: 6

Members Present: Sen. Beverly Gard, Chairperson; Sen. Lindel Hume; Rep. Ron Herrell; Rep. David Wolkins; Lori Kaplan; John Ulmer; Ellen Tobias; Julia Wickard; William Hayden; William Goffinet.

Members Absent: Sen. Kent Adams; Sen. Vi Simpson; Rep. James Bottorff; Rep. Steven Heim; Dwayne Burke; Shelley Miller; Michael Sutherlin; Randal D. Edgemon.

1. Call to order

Senator Gard called the meeting to order at 10:10 a.m.

2. IDEM information

Commissioner Kaplan distributed the following information (Handout #1):

1. Indiana Clean Energy Credit Program notice
2. News release on lowered SRF Program interest rates
3. Portion of Board Report for period July 1, 2002 - June 30, 2003 Pertaining to Enforceable Operating Agreements
- _____ 4. Agency Wide Services Analysis for Fiscal Year 2004

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

5. Comparison of Indiana's Current Tire Fee to Other States

6. Decision of the Indiana Supreme Court in IDEM vs. Twin Eagle LLC

7. Memorandum of June 5, 2001, on NPDES Permit for Discharges of Dredged and Fill Material to Isolated Waters No Longer Subject to Federal Jurisdiction

3. LaGrange County Sewer District

Representative Wolkins summarized the issues in the dispute between Gordon's Campground (Campground) and the LaGrange County Sewer District (District) over service rates. P.L. 239-2003 (HEA 1659) attempted to address the issues, but the dispute continues.

Sandi Bubb, Campground, described the Campground, its use of the District's services, the amounts paid in recent years to the District, and efforts to resolve with the District the Campground's contention that the District's bills are excessive. Dennis Harney, Indiana Manufactured Housing Association and Recreation Vehicle Indiana Council, Inc., expressed support for the position of the Campground and suggested that a process for review of district rates, possibly by the Indiana Utility Regulatory Commission (IURC), is needed.

John Gastineau, attorney for the District, stated that the rates charged to the Campground were determined in accordance with the law, and that the finances and operations of the District have successfully undergone review by the State Board of Accounts and other entities. He described the actions taken by the District to comply with P.L. 239-2003 (HEA 1659), the efforts made to resolve the rate issues with the Campground, and the existing appeal process. In response to questions from the council, he discussed the method used to determine the rates and the potential effects on the District's finances if metered usage were to result in reduced rates for the Campground or if the Campground were to go out of business.

Senator Gard commented that the rates applied to the Campground appear to be excessive. Mayor Goffinet noted his experience in a situation where more substantial sewer services were provided at significantly less cost. Representative Wolkins stated that the rates do not appear to be reasonable, and that there is a lack of communication between the Campground and the District. He suggested that certain areas of expertise should be required of district board members and that district rates should be subject to review by a state entity such as the IURC.

4. Final report and recommendations

The council considered and voted on proposed recommendations for inclusion in the final report, and approved the final report by voice vote of a majority of members appointed to the council.

To assist the council in its consideration of a proposed recommendation concerning solid waste management districts, Karen Firestone, Legislative Services Agency, gave a brief summary of her presentation Issues Relating to Recycling and Solid Waste Management Programs (Handout #2). Ms. Firestone also distributed a memorandum (Handout #3) on Revenues and Expenditures of Solid Waste Management Districts.

To assist the council in its consideration of a proposed recommendation concerning septic systems, Zachary Cattell, Indiana State Department of Health, described the department's current actions to delay for at least two years the effective date of the part of the proposed septic system rule that pertains to nitrate reduction in septic systems.

5. Wetlands update

Felicia Robinson, IDEM, summarized the recent Indiana Supreme Court decision in IDEM vs.

Twin Eagle LLC (See Handout #1). She stated that the court upheld the state's positions that:

- a. state statutes authorize IDEM to regulate waters no longer under federal jurisdiction as a result of Solid Waste Agency of N. Cook County v. United States Army Corps of Engineers, 531 U.S. 159 (2001);
- b. IDEM has authority to regulate private ponds; and
- c. IDEM may use the NPDES permit program to regulate isolated wetlands.

Tim Method, IDEM, described the manner in which IDEM has applied the NPDES permit program to isolated wetlands in recent months.

Larry Kane, Bingham McHale, summarized the court decision from the perspective of the Indiana Builders Association. Although he agrees that the decision was clear with respect to the use of the NPDES permit program to regulate isolated wetlands, he believes that IDEM's jurisdiction over waters formerly under federal jurisdiction and over private ponds is subject to a case by case determination based on the particular facts at hand.

6. Adjournment

The meeting was adjourned at 12:55 p.m.